

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

AROLDO GARCIA, JR.

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Case No. 4:05cr52  
(Judge Schneider)

## **REPORT AND RECOMMENDATION** **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on September 20, 2010, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Ernest Gonzalez.

On February 16, 2006, Defendant was sentenced by the Honorable Michael H. Schneider to sixty (60) months' custody followed by three (3) years of supervised release for the offense of Possession of a Firearm in Furtherance of a Drug Trafficking Crime. On September 1, 2009, Defendant completed his period of imprisonment and began service of his supervised term.

On August 24, 2010, the U.S. Pretrial Services Officer executed a First Amended Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated several mandatory and standard conditions. Violation allegations one, two, and three were dismissed by the Government. The petition also alleged violation of the following additional mandatory condition: The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer. The petition also alleged violation of the following additional standard condition: The defendant shall refrain from excessive use of alcohol

and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician. The petition alleged a violation of the following special condition: The defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Officer, until such time as the defendant is released from the program by the probation officer.

The petition alleges that Defendant committed the following acts with regard to the remaining violations: On April 20, 2010, Defendant submitted a urine specimen which tested positive for methamphetamine. When questioned regarding said drug use he denied using methamphetamine, but admitted verbally and in writing to ingesting prescription medication Xanax, which was not prescribed to him. It should be noted that Xanax would not cause a urine specimen to test positive for methamphetamine; (2) Defendant submitted a urine specimen which tested positive for methamphetamine on June 7, 2010. When questioned regarding said drug use he denied using, but stated he was dating a girl who was using. He contends he ended their relationship when he discovered she was using illegal drugs; (3) Defendant also submitted a urine specimen on June 30, 2010, which tested positive for methamphetamine; and (4) Defendant failed to submit to drug testing at McCary Counseling, Denton, Texas, on May 21, July 6, and July 17, 2010, as directed.

Prior to the Government putting on its case, Defendant entered a plea of true to the remaining violations.

### **RECOMMENDATION**

The Court recommends that the District Judge revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of sixteen (16) months with no supervised release to follow. It is also recommended that Defendant be housed in the Bureau of

Prisons, Seagoville Unit.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing.

Defendant and the Government also waived their right to file objections.

**SIGNED this 21st day of September, 2010.**

  
AMOS L. MAZZANT  
UNITED STATES MAGISTRATE JUDGE